

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-5126

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RANDY KENDRELL SIMPSON, a/k/a Cheese,

Defendant - Appellant.

No. 11-5029

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RANDY KENDRELL SIMPSON, a/k/a Cheese,

Defendant - Appellant.

Appeals from the United States District Court for the Middle
District of North Carolina, at Greensboro. N. Carlton Tilley,
Jr., Senior District Judge. (2:96-cr-00011-NCT-1)

Submitted: March 7, 2012

Decided: March 22, 2012

Before MOTZ, DUNCAN, and AGEE, Circuit Judges.

No. 09-5126 dismissed; No. 11-5029 affirmed by unpublished per curiam opinion.

Lisa S. Costner, LISA S. COSTNER, PA, Winston-Salem, North Carolina, for Appellant. Michael Francis Joseph, Angela Hewlett Miller, Assistant United States Attorneys, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated appeals, Randy Kendrell Simpson seeks to appeal the district court's judgment revoking his supervised release and imposing a forty-two-month prison term and a forty-eight-month term of supervised release (No. 09-5126) and appeals the court's subsequent order denying an extension of time to appeal the judgment of revocation (No. 11-5029). The Government has moved to dismiss Simpson's appeal of the judgment of revocation as untimely.

In criminal cases, the defendant must file a notice of appeal within ten days after the entry of judgment. Fed. R. App. P. 4(b)(1)(A)(i) (applicable to notices of appeal filed before Dec. 1, 2009). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to thirty days to file a notice of appeal. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered the judgment of revocation on October 8, 2009. Simpson filed his notice of appeal on November 19, 2009, outside of the ten-day appeal period but within the thirty-day excusable neglect period. We previously remanded this case to the district court for that court to determine whether Simpson could show good cause or excusable neglect warranting an extension of the appeal period. On

remand, the district court concluded that an extension of the appeal period was not warranted. After a careful review of the record, we find no abuse of discretion in that decision. See United States v. Breit, 754 F.2d 526, 529 (4th Cir. 1985) (stating the standard of review). Accordingly, in No. 11-5029, we affirm the district court's order.

Because Simpson failed to file a timely notice of appeal from the district court's judgment revoking his supervised release or to obtain an extension of the appeal period, we grant the Government's motion to dismiss and supplemental motion to dismiss and dismiss the appeal in No. 09-5126. See United States v. Mitchell, 518 F.3d 740, 744 (10th Cir. 2008) (stating that the time limit in Rule 4(b) "must be enforced by th[e] court when properly invoked by the government").

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 09-5126 DISMISSED;
No. 11-5029 AFFIRMED